IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO2489 OF 2004

Shri Shantilal R. Shah ...Petitioner.

V/s

Smt. Hemlata R. Shah & Ors. ...Respondents.

Mr. M.B. Shirsat for Mr. M.N. Sandhyanshiv for the petitioner.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 9th March, 2005

P.C.:

1. Petitioner takes an exception to the order dated 25/8/2004 passed by the Metropolitan Magistrate, 12th Court, Bandra, Mumbai by which the Metropolitan Magistrate has refused to issue process against the respondents for the offence punishable under section 304(A) of the Indian Penal Code.

2. The case of the complainant is that his brother was admitted in the hospital and respondent Nos. 1 and 2 did not properly look after his brother when he had gone abroad and it is alleged that on account of the said omission on the part of the accused, his brother died.

3. Heard the learned Counsel for the petitioner. I have also perused the complaint filed by the petitioner and the impugned order passed by the Metropolitan Magistrate. The learned Magistrate has correctly observed that there has to be a direct nexus between the rash and negligent act on the part of the accused and the death of the deceased. No averments have been made to that effect in the complaint. The deceased died in the hospital a few days after his leg was amputed by the doctors. No allegation has been made against the doctors in the present complaint. I do not see any reason to interfere with the said order. Petition is dismissed.

V.M. KANADE, J.